LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 27 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 475

GREAT LAKES CARBON CORPORATION, *Petitioner,*

v.

CONTINENTAL OIL COMPANY, UNION CARBIDE CORPORATION ET AL., *Respondents.*

PETITIONER'S REPLY BRIEF

EARL BABCOCK
200 Hightower Building
Oklahoma City, Oklahoma 73102

WAYNE L. BENEDICT
815 Connecticut Avenue
Washington, D. C. 20006

S. W. PLAUCHÉ, JR.
Pioneer Building
Lake Charles, Louisiana

Attorneys for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 475

GREAT LAKES CARBON CORPORATION, *Petitioner*,

v.

CONTINENTAL OIL COMPANY, UNION CARBIDE CORPORATION ET AL., *Respondents*.

PETITIONER'S REPLY BRIEF

We do not believe Counsel for Respondents when they say (Respondents' Brief, page 8) that they cannot accurately state to this Court what it was that Judge Brown said at the hearing in the Court of Appeals on January 4th, 1965.

No lawyer can be told that his co-counsel has "tarred himself," and not remember it.

Respondents made no reply to the petition for rehearing in the Court of Appeals where we quoted (See

page 16a of the Appendix to our Petition for the Writ of Certiorari) what Judge Brown had said.

If we had erroneously quoted Judge Brown, we would have deserved and received most severe censure from the Court of Appeals.

The issue presented to this Court is not whether the impounded documents are privileged. We admit an attorney-client relationship existed.

Our Petition does not even present an issue to this Court as to whether an attorney for Continental Oil Company tarred himself with the result that Respondents lost the protection of the privilege. We have not sought a review of this question because we believe it should first be decided by the lower Courts.

The Brief for Respondents admits (page 10):

> "In neither decision did the Courts consider it necessary or proper to discuss Petitioner's reckless charges of fraud."

A charge of fraud is a very serious matter. Where such charge is made, we submit that it is the duty of the Courts to decide whether it exists or not.

The prayer of our Petition is that this Court require the lower Courts to find whether there was fraud and decide whether the rule of evidence as to when privilege takes flight, established by the authorities quoted in the Petition, pages 4 and 5, applies.

In the *Seismograph* (135 F. Supp. 342) case Judge Wright followed the rule of the *Clark* (289 U.S. 1) case under circumstances where ". . . the information elicited by discovery so far in this case does not by any means establish the charge as a fact . . ."

The Petition for Rehearing in the present case put the question squarely before the Court of Appeals and its denial, without opinion, was a refusal by that Court to rule on the question of whether *Clark* and *Seismograph* apply.

Such a refusal cannot constitute a "*complete answer* to the argument that the Court should have expressly passed on the *Clark* case". Nor, can such a refusal constitute a demonstration "that there is no 'other evidence' which would 'give colour to the charge of fraud.'" [The quotations are from Respondents' Brief, pages 10 and 11.] The guide lines thus laid down by this Court in the *Clark* case should be followed by the lower courts and a refusal to do so should warrant the exercise of supervisory authority.

Petitioner therefore submits that the relief prayed for in the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

EARL BABCOCK
200 Hightower Building
Oklahoma City, Oklahoma 73102

WAYNE L. BENEDICT
815 Connecticut Avenue
Washington, D. C. 20006

S. W. PLAUCHÉ, JR.
Pioneer Building
Lake Charles, Louisiana

Attorneys for Petitioner

Service

Service of this Reply Brief has been made upon Respondents by mailing copies, air mail, to Mr. C. Frederick Leydig, their attorney, One North LaSalle Street, Chicago, Illinois, 60602, this 27th day of September 1965.

WAYNE L. BENEDICT
Attorney for Petitioner